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June 8, 2001

Via Fax: 269-4539

State of Alaska  
Local Boundary Commission  
550 West 7th Avenue, Suite 1770  
Anchorage, Alaska 99501-3510

Re: City of Wrangell Comments on Proposed Changes in LBC Regulations

Dear Commissioners:

These comments are made on behalf of the City of Wrangell, which is in the process of submitting a petition for incorporation of a unified municipality using the name City and Borough of Wrangell. Our comments reference the new section numbers accompanying the proposed regulations.

1. 3 AAC 110.410(b). The new regulations would require that a petition for incorporation of a new borough or a unified municipality be signed by the requisite percentage of voters outside any cities (which is 15% for borough or unified municipality incorporation) based on *either* "the number of registered voters" or the number of votes cast in the area of the proposed borough outside any city or cities joining the petition. In the case of an incorporation petition (as opposed to a consolidation) this regulation would run directly afoul of statute. A.S. 29.05.060(7) requires that in a petition for incorporation of a borough or unified municipality, the signature and resident address of 15% of the voters outside cities in the proposed borough or unified municipality, "based on the number who voted in the respective areas in the last general election." Statute therefore prescribes the one and only basis for determining the percentage of voters, which is the number who actually voted in the last general election. A regulation which expands the basis for the percentage determination to the number of registered voters would impose a higher requirement and greater difficulty in obtaining the requisite percentage of petition signers than is required by statute, and would therefore be illegal under A.S. 44.62.030, which requires that a regulation be consistent with statute. See, Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971.)

I understand that this proposed change in regulations was intended to address both initial incorporations, and consolidations. As applied to initial incorporations, it would exceed statutory authority.

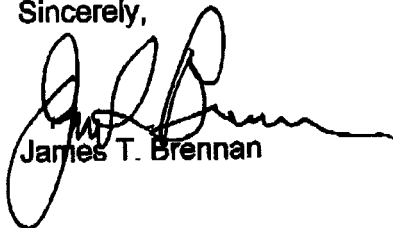
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2. 3 AAC 110.560(b). This change would establish more structure to the hearing procedure. Our only concern here is that the new references to witnesses "with expertise in matters relevant to the proposed change" not be interpreted too restrictively, e.g., to require that the petitioner's witnesses are qualifiable as "experts" to the extent which would be required by a court, such as to require extensive educational, professional or other experience. So long as "expertise in matters relevant to the proposed change" is deemed to include witnesses such as long-standing community members who are directly familiar with the economic, transportation, educational or other facts pertinent to the incorporation criteria, we have no objection. If the regulation is intended to require that the petitioner's and respondent's witnesses be expensive consultants, this will unnecessarily squelch the parties from presenting their cases. If the purpose is to simply prevent the parties from lining up a number of opinionated local residents to state their general support or opposition, we agree that this type of testimony should be restricted to the public comment portion.

3. 3AAC 110.580(d). This subsection states the grounds for reconsideration of a Commission decision. We suggest that the Commission add an additional criterion, that "the commission has overlooked or misconceived a material question". This corresponds to the language of Civil Rule 77(I)(iii), the rule applicable to reconsideration by a court. Overlooking a material question is quite arguably something different from making a "material error of fact", and should be a separate basis for reconsideration.

Thank you for your attention to these matters.

Sincerely,



James T. Brennan

JTB:rs

cc: Carol Rushmore, Economic Development Planner (City of Wrangell)  
30801 State of Alaska Ltr